



INTERIOR BOARD OF INDIAN APPEALS

Wayne and Nora Roach v. Muskogee Area Director, Bureau of Indian Affairs

20 IBIA 166 (08/07/1991)

Reconsideration denied:
20 IBIA 244



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

WAYNE AND NONA ROACH,
Appellants

v.

MUSKOGEE AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Docketing and Dismissing
: Appeal
:
:
: Docket No. IBIA 91-114-A
:
:
: August 7, 1991

On August 6, 1991, the Board of Indian Appeals received a notice of appeal from Wayne and Nona Poach, by means of a July 31, 1991, referral from the Acting Director, Office of Trust and Economic Development, Bureau of Indian Affairs (BIA). The notice of appeal is dated March 20, 1991, and is addressed to the Assistant Secretary - Indian Affairs. It indicates that appellants are attempting to challenge a February 25, 1991, decision of the Muskogee Area Director, BIA, concerning contamination of a pond with salt water from an oil field operation.

The appeal is docketed under the above case name and number, which should be cited in all future correspondence or inquiries regarding the matter. The Board finds, however, that the circumstances of this case require that the appeal be dismissed.

The Area Director's decision concluded:

This decision may be appealed to the Interior Board of Indian Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340. Your notice of appeal to the Board must be signed by you or your attorney and must be mailed within 30 days of the date you receive this decision. * * * You must send copies of your notice of appeal to (1) the Assistant Secretary - Indian Affairs, * * * (2) each interested party known to you, and (3) this Office. Your notice of appeal sent to the Board of Indian Appeals must certify that you have sent copies to these parties. * * *

If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

Appellants have failed to file a timely notice of appeal. The Area Director's decision clearly informed them that their notice of appeal was to be filed with the Board and provided the Board's address. Appellants chose, how-

ever, to file their notice of appeal with the Assistant Secretary - Indian Affairs. The Board has consistently held that a notice of appeal is not timely when the appellant has been given the correct appeal information but files his/her notice of appeal with an official other than the Board, resulting in receipt of the notice of appeal by the Board outside the time period specified in the regulations. ^{1/} E.g., Baker v. Acting Muskogee Area Director, 20 IBIA 164 (1991); Iowa Tribe v. Acting Anadarko Area Director, 20 IBIA 27 (1991); Maynard v. Acting Assistant Aberdeen Area Director, 19 IBIA 273 (1991); Kiowa Business Committee v. Acting Anadarko Area Director, 18 IBIA 384, recon. denied, 18 IBIA 401 (1990); McLean v. Portland Area Director, 18 IBIA 311 (1990); Jones v. Assistant Anadarko Area Director, 17 IBIA 122 (1989).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is dismissed as not being timely filed.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge

^{1/} The Board notes that an exceptionally long period of time passed between BIA's receipt of the incorrectly filed notice of appeal on April 1, 1991, and its July 31, 1991, transmittal of the document to the Board. Even if the notice of appeal had been processed expeditiously, however, it is unlikely that it would have reached the Board in a timely manner. In any event, an appellant who ignores explicit appeal instructions, and files his/her notice of appeal in the wrong office, must bear the risk of delays in transmitting the notice to the Board.